

Hon. John H. Chun

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KURT BENSHOOF, et al.,

No.: 2:24-CV-00808-JHC

Plaintiffs,

v.

PLAINTIFFS' MOTION TO DISQUALIFY  
COUNSEL (CONFLICT OF INTEREST)

ANDREA CHIN, et al.,

Defendants.

**I. INTRODUCTION**

Pursuant to Local Civil Rule 7, Plaintiffs move this Court to disqualify counsel Sarah N. Turner and Michael C. Tracy from further representing Defendants Nathan Cliber and Blair Russ due to significant conflicts of interest and the resulting prejudice to Plaintiffs. Turner and Tracy currently serve simultaneously as both pro se defendants and counsel for Defendants Cliber and Russ creating substantial ethical conflicts and confusion that will prejudice Plaintiffs' right to a fair trial.

**II. FACTUAL BACKGROUND**

Plaintiffs initiated this suit alleging multiple constitutional and statutory violations by several defendants, including attorneys Sarah N. Turner and Michael C. Tracy, sued

MOTION TO DISQUALIFY COUNSEL  
No. 2:24-CV-00808-JHC

1 individually for acts of misconduct involving Defendants Nathan Cliber and Blair  
 2  
 3 Russ.

4  
 5 Attorneys Sarah Turner and Michael Tracy currently represent Defendants Nathan  
 6  
 7 Cliber and Blair Russ in this litigation. Attorneys Turner and Tracy filed notices of  
 8  
 9 appearance [Doc. No. 80] and motions on behalf of Defendants Cliber and Russ in this  
 10 proceeding, despite being individually named defendants themselves.  
 11

12  
 13 Turner and Tracy, acting as counsel, have filed pleadings on behalf of Defendants  
 14  
 15 Cliber and Russ, despite simultaneously being named individually as defendants for  
 16 alleged misconduct relating to the same facts underlying Plaintiffs' claims.  
 17  
 18

### 19 **III. LEGAL ARGUMENT**

#### 20 21 **A. Impermissible Conflict of Interest<sup>1</sup> (RPC 1.7(a)(1))**

22  
 23 Washington RPC 1.7(a)(1) prohibits representation when:  
 24

25  
 26 “the representation of one client will be directly adverse to another client.”

27  
 28 Representing Opposing Parties in Same Lawsuit Representation of opposing persons  
 29 in the same lawsuit is prohibited by Rule 1.7(a) 1); this conflict is not waivable. Rule  
 30 1.7(b)(3); see, e.g., *Ex parte Osbon*, 888 So. 2d 1236 (Ala. 2004) (in divorce proceeding,  
 31 husband's lawyer subpoenaed wife's records from mental health agency; lawyer's partner  
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<sup>1</sup> Rule 1.7 Conflict of Interests. Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct (9th ed., 2019) (Kindle Locations 4233-4240; 4288-4290) American Bar Association.

1 responded on behalf of agency)  
2  
3

4 **B. Impermissible Conflict of Interest (RPC 1.7(a)(2))**  
5

6 Washington RPC 1.7(a)(2) prohibits representation when:  
7

8 “there is a significant risk that the representation of one or more clients will  
9  
10 be materially limited by the lawyer's personal interests.”  
11

12 Because Turner and Tracy are named defendants whose personal interests are  
13 directly implicated by the outcome of claims involving Defendants Cliber and Russ, their  
14 ability to objectively and zealously represent Defendants Cliber and Russ is materially  
15  
16 compromised. Their representation directly violates RPC 1.7(a)(1) and RPC 1.7(a)(2).  
17  
18

19  
20 **C. Prohibited Representations - Rule 1.7**  
21

22 Ordinarily, clients may consent to representation notwithstanding a conflict.  
23

24 However, as indicated in paragraph (b), some conflicts are nonconsentable,  
25 meaning that the lawyer involved cannot properly ask for such agreement or provide  
26 representation on the basis of the client's consent. When the lawyer is representing more  
27  
28 than one client, the question of consentability must be resolved as to each client.  
29  
30

31 Consentability is typically determined by considering whether the interests of the  
32  
33 clients will be adequately protected if the clients are permitted to give their informed  
34  
35 consent to representation burdened by a conflict of interest.

1 Thus, under paragraph (b)(1), representation is prohibited if in the circumstances  
 2  
 3 the lawyer cannot reasonably conclude that the lawyer will be able to provide competent  
 4 and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).<sup>2</sup>  
 5  
 6

7 Paragraph (b)(3) describes conflicts that are nonconsentable because of the  
 8  
 9 institutional interest in vigorous development of each client's position when the clients are  
 10 aligned directly against each other in the same litigation or other proceeding before a  
 11  
 12 tribunal. Whether clients are aligned directly against each other within the meaning of this  
 13  
 14 paragraph requires examination of the context of the proceeding.<sup>3</sup>  
 15

#### 16 **D. Lawyer as Witness (RPC 3.7)**

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 18  
 19 RPC 3.7 prohibits attorneys from acting as advocates at a trial where they are likely  
 20  
 21 to be necessary witnesses. Attorneys Turner and Tracy will inevitably become witnesses  
 22 regarding their own alleged conduct and knowledge of underlying facts, creating  
 23  
 24 impermissible dual roles. Their testimony is critical to proving Plaintiffs' claims, making  
 25  
 26 their continued representation improper and unethical.  
 27

28 The rules and supporting case law is not in "favor" of allowing pro se defendant(s),  
 29  
 30 to be attorney(s) of record for their co-defendants, which is not only prejudicial to the co-  
 31  
 32 defendants but also to the opposing parties which in this case are the Plaintiffs.  
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34  
 35 <sup>2</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct (9<sup>th</sup> ed., 2019) (Kindle Locations 4233-4240). American Bar Association.

<sup>3</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct (9<sup>th</sup> ed., 2019) (Kindle Locations 4245-4248). American Bar Association.

1           *Suchite v. Kleppin*, 784 F. Supp. 2d 1343 (S.D. Fla. 2011) (lawyer disqualified  
2  
3  
4 from representing co-defendants but not from representing self at trial)

5  
6           *State ex rel. Neb. State Bar Ass 'n v. Neumeister*, 449 N.W. 2d 17 (Neb. 1989)  
7  
8 (lawyer suspended for not withdrawing; trial court's failure to disqualify "will not exonerate  
9 him from discipline where it is found that his conduct is in violation of disciplinary rules').  
10  
11  
12 See generally *Douglas R. Richmond, Lawyers as Witnesses*, 36 N.M. L. Rev. 47 (Winter  
13 2006).  
14

#### 15 16           **E. Lawyer May Not Act as Advocate at Trial if Likely to Be Necessary Witness** 17

18           Rule 3.7 requires disqualification when it is "likely" the lawyer will be a "necessary"  
19  
20 witness. *In re Gibrick*, 562 B.R. 183 (Bankr. N.D. Ill. 2017) (courts have "variously  
21 described" circumstances under which lawyer is necessary witness, such as when it is  
22 "foreseeable"; when lawyer is aware of facts making it "obligatory" for him to testify; when  
23 lawyer has "crucial information [that] must be divulged"; and when lawyer's testimony is  
24 "essential to the case"; collecting cases).  
25  
26  
27  
28

#### 29 30           **F. When Lawyer-Witness Is Also Litigant** 31

32           The rationales of the advocate-witness rule do not apply to the prose lawyer-litigant.  
33  
34 See *Duncan v. Poythress*, 777 F. 2d 1508 (11th Cir. 1985);  
35

1 *Suchite v. Kleppin*, 784 F. Supp. 2d 1343 (S.D. Fla. 2011) (lawyer disqualified from  
 2  
 3 representing co-defendants but not from representing self at trial);<sup>4</sup>  
 4

### 5 **G. Prejudice to Plaintiffs and Jury Confusion**

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8 Allowing Turner and Tracy to simultaneously serve as defendants and attorneys  
 9 presents a substantial and unfair prejudice to Plaintiffs by confusing and misleading the  
 10 jury. Jurors cannot reasonably distinguish when these attorneys are acting as advocates  
 11 versus when they are testifying or defending themselves as witnesses or defendants. This  
 12 dual capacity compromises the jury's ability to fairly assess witness credibility and  
 13 undermines the integrity and fairness of the trial.  
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18 Courts consistently recognize this as impermissible, as it violates fundamental  
 19 fairness and due process rights, and unduly prejudices Plaintiffs' right to a fair trial.  
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 21  
 22

23 When a lawyer takes on both roles, jurors are likely to be confused about  
 24 "whether statement by an advocate-witness should be taken as proof or as an analysis of  
 25 the proof." Rule 3.7, cmt. [2].<sup>5</sup>  
 26  
 27  
 28

29 Confusion regarding the lawyer's role could prejudice a party or call into  
 30 question the impartiality of the judicial process itself. See *People v. Rivera*, 986 N.E. 2d  
 31  
 32  
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34 <sup>4</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct  
 35 (9th ed., 2019) (Kindle Locations 11438-11439). American Bar Association.

<sup>5</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct  
 (9th ed., 2019) (Kindle Locations 11217-11222). American Bar Association

1 634 (Ill. 2013) (rule protects against possibility that "attorney-witness may not be a fully  
 2 objective witness, causing harm to the client's cause, or the trier of fact may grant undue  
 3 weight to the attorney's testimony, unfairly disadvantaging the opposing party")  
 4  
 5

6  
 7 "The right to confront, cross-examine, and impeach adverse witnesses is  
 8 one of the most fundamental rights sought to be preserved by the Seventh  
 9 Amendment provision for jury trials in civil cases." *Adickes v. Kress & Co.*,  
 10 398 U.S. 144, 176 (1970).  
 11  
 12  
 13

14  
 15 *Jensen v. Poindexter*, 352 P. 3d 1201 (Okla. 2015) (rule protects integrity of  
 16 judicial process by eliminating possibility that lawyer will not be an objective  
 17 witness, reducing risk that fact-finder may confuse roles of witness and advocate,  
 18 and promoting public confidence in a fair judicial system); *see also Smith v.*  
 19 *Wharton*, 78 S.W. 3d 79 (Ark. 2002) (by sitting with trial counsel and actively  
 20 participating in trial though he expected to testify, lawyer "reassumed his role as an  
 21 advocate" and therefore should not have been allowed to testify; appellate court  
 22 would disregard his testimony and would send copy of its opinion to disciplinary  
 23 committee);  
 24  
 25

26 *State ex rel. Neb. State Bar Ass 'n v. Neumeister*, 449 N.W. 2d 17 (Neb. 1989)  
 27 (lawyer suspended for not withdrawing; trial court's failure to disqualify "will not  
 28 exonerate him from discipline where it is found that his conduct is in violation of  
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1 disciplinary rules'). *See generally Douglas R. Richmond, Lawyers as Witnesses*, 36  
 2 N.M. L. Rev. 47 (Winter 2006).

3  
 4 Because the advocate-witness rule protects opposing parties and the integrity  
 5 of the judicial system as a whole, the client's consent to the representation or  
 6 willingness to forgo the lawyer's testimony will not prevent disqualification if the  
 7 lawyer's testimony is deemed "necessary." *See Premium Prods., Inc. v. Pro*  
 8 *Performance Sports, LLC*, 997 F. Supp. 2d 433 (E.D. Va. 2014) (rule "not subject to  
 9 client waiver because the interests served by the rule extend beyond those of a single  
 10 client");

11  
 12 *MacArthur v. Bank of N.Y.*, 524 F. Supp. 1205 (S.D.N.Y. 1981) (disqualifying  
 13 defendant bank's law firm despite bank's willingness to stay with firm and forgo its  
 14 lawyer's necessary testimony; bank could obtain other counsel, but could not obtain  
 15 substitute for his testimony).

16  
 17 The jury's confusion would severely prejudice Plaintiffs, thereby requiring  
 18 disqualification of counsel.  
 19

## 20 **H. Rule 3.3 Candor Toward the Tribunal**

21  
 22 This Rule sets forth the special duties of lawyers as officers of the court to avoid  
 23 conduct that undermines the integrity of the adjudicative process.  
 24

25  
 26 A lawyer acting as an advocate in an adjudicative proceeding has an obligation to  
 27



1 Present the client's case with persuasive force. Performance of that duty while maintaining  
 2 confidences of the client, however, is qualified by the advocate's duty of candor to the  
 3 tribunal. Consequently, although a lawyer in an adversary proceeding is not required to  
 4 present an impartial exposition of the law or to vouch for the evidence submitted in a cause,  
 5 the lawyer must not allow the tribunal to be misled by false statements of law or fact or  
 6 evidence that the lawyer knows to be false.<sup>6</sup>

### 12 **I. Representations by a Lawyer**

14 An advocate is responsible for pleadings and other documents prepared for  
 15 litigation, but is usually not required to have personal knowledge of matters asserted  
 16 therein, for litigation documents ordinarily present assertions by the client, or by someone  
 17 on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1.

22 However, an assertion purporting to be on the lawyer's own knowledge, as in an  
 23 affidavit by the lawyer or in a statement in open court, may properly be made only when  
 24 the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably  
 25 diligent inquiry. There are circumstances where failure to make a disclosure is the  
 26 equivalent of an affirmative misrepresentation.<sup>7</sup>

### 32 **J. Statements Made In Representing Client**

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35 <sup>6</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct (9<sup>th</sup> ed., 2019) (Kindle Locations 9783-9788). American Bar Association.

<sup>7</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct (9<sup>th</sup> ed., 2019) (Kindle Locations 9789-9794). American Bar Association

1 Rule 3.3( a)( 1) prohibits a lawyer from knowingly making a false statement of  
 2  
 3 fact or law to a tribunal- whether material or not, whether oral or written, and whether in  
 4  
 5 an affidavit, a pleading, or another document. *See, e.g., Ligon v. Price*, 200 S.W. 3d 417  
 6  
 7 (Ark. 2004).<sup>8</sup>

8  
 9 Douglas R. Richmond, *Lawyers' Professional Responsibilities and Liabilities in*  
 10  
 11 *Negotiations*, 22 Geo. J. Legal Ethics 249 (Winter 2009) (" lawyer who violates Rule 3.3(a)  
 12  
 13 necessarily violates Rule 8.4 (c) as well").<sup>9</sup>  
 14

#### 15 16 **K. Statements or Omissions that Mislead**

17  
 18 Failure to make a disclosure can be "the equivalent of an affirmative  
 19  
 20 misrepresentation." Rule 3.3, cmt. [3]. "Any differences between 'false' and 'misleading'  
 21  
 22 statements are in-irrelevant for Rule 3.3( a)( 1) purposes .... Courts routinely employ Rule  
 23  
 24 3.3( a)( 1) and equivalent rules to discipline lawyers who have misled through their  
 25  
 26 silence." Douglas R. Richmond, *Appellate Ethics: Truth, Criticism, and Consequences*, 23  
 27  
 28 Rev. Litig. 301, 310-11 (Spring 2004). *See, e.g.,*

29  
 30 *Kim v. 511 E. 5th St., LLC*, No. 12 Civ. 8096 (JCF), 2016 WL 6833928, 2016 BL  
 31  
 32  
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35 <sup>8</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct (9th ed., 2019) (Kindle Locations 9899-9901). American Bar Association

<sup>9</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct (9th ed., 2019) (Kindle Locations 9932-9934). American Bar Association.

1 391452 (S.D.N.Y. Nov. 7, 2016).<sup>10</sup>

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3  
4 **L. Reporting Professional Misconduct- Rule 8.3**

5  
6 “(a) A lawyer who knows that another lawyer or LLLT has committed a violation of  
7 the applicable Rules of Professional Conduct that raises a substantial question as to  
8 that lawyer's or LLLT's honesty, trustworthiness or fitness as a lawyer or LLLT in  
9 other respects, should inform the appropriate professional authority.”

10 Although Rule 8.3 does not require a lawyer to report his or her own misconduct,  
11  
12 the lawyer must report the misconduct of others even if doing so would implicate the  
13 lawyer's own conduct as well. See, e.g., In re Rivers, 331 S.E. 2d 332 (S.C. 1984)  
14 (inexperienced lawyer helped his partner use private investigator to contact potential jurors;  
15 lawyer disciplined for failing to report partner as well as for his own role)  
16  
17

18  
19 A lawyer generally must report the misconduct of law firm colleagues and former  
20  
21 law firm colleagues. See, e.g., In re Rivers, 761 S.E. 2d 234 (S.C. 2014) (reporting partner's  
22 trust account misappropriations only after learning of disciplinary agency's investigation);  
23 ABA Formal Ethics Op. 03-429 (2003) (partner must report impaired associate's violation  
24 of ethics rules).  
25  
26  
27

28 Va. Ethics Op. 1886 (2017) (must report firm lawyer's misconduct involving  
29  
30 dishonesty even if lawyer is in treatment for substance abuse problem that contributed to  
31  
32  
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<sup>10</sup> Ellen J. Bennett, Helen W. Gunnarsson. Annotated Model Rules of Professional Conduct (9<sup>th</sup> ed., 2019) (Kindle Locations 9935-9941). American Bar Association.

misconduct); *see also Skolnick v. Altheimer & Gray*, 730 N.E. 2d 4 (Ill. 2000) (trial court abused discretion by refusing to modify protective order so associate could report misconduct by firm's former partner);

*Cf. Estate of Spencer v. Gavin*, 946 A. 2d 1051 (N.J. Super. Ct. App. Div. 2008)

(Rule 8.3 duty of lawyer to report officemate's embezzlement "strengthens" court's conclusion that "inaction [can expose] him to civil liability to those who were harmed" by failure to report); Va. Ethics Op. 1887 (2017) (no requirement to report lawyer's impairment if representation is competent, but must report if impairment results in incompetent representation). *See generally Cynthia L. Gendry, An Attorney's Duty to Report the Professional Misconduct of Co-Workers*, 18 S. Ill. U. L.J. 603 (Spring 1994);

Paragraph (b) requires that misconduct by a judge be reported to the appropriate authority. *Lisi v. Several Att'ys*, 596 A. 2d 313 (R.I. 1991) (lawyers' loans to judge violated Rule 3.5; lawyers' failure to report judge violated Rule 8.3); *see also Ohio Sup. Ct. Ethics Op. 2017-2* (2017) Judge must report misconduct of lawyer or another judge)

#### **M. Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

1 “Paragraph (a): Violating, Attempting to Violate, or Assisting in Violation of Ethics Rules”

2  
3  
4 Model Code, Rule 8.4( a) states that it misconduct even to attempt to violate an ethics rule.

5 *See People v. Katz*, 58 P. 3d 1176 (Colo. O.P.D.J. 2002) (attempted conversion of funds;

6  
7  
8 "The fortuitous discovery and frustration of [respondent's] intended misappropriation of  
9 those funds does not lessen the seriousness of his actions.").

10  
11  
12 *In re Swarts*, 30 P. 3d 1011 (Kan. 2001) (attempt to falsify evidence).

13  
14 Paragraph (a) prohibits a lawyer from knowingly assisting or inducing another to  
15 violate the ethics rules, or from violating the rules through the acts of another. *See People*  
16 *v. Cozier*, 74 P. 3d 531 (Colo. O.P.D.J. 2003) (lawyer asked notary public to notarize  
17 signature neither had witnessed);

18  
19  
20  
21  
22 *In re Asher*, 772 A. 2d 1161 (D.C. 2001) (inducing another lawyer to lie to court).

23  
24 Paragraph (c)' s prohibition of "conduct involving dishonesty, fraud, deceit or  
25 misrepresentation" is broad and, like the other provisions of Rule 8.4, encompasses conduct  
26 outside the practice of law. *See, e.g., D.C. Ethics Op.* 336 (2006).

27  
28  
29  
30  
31 A lawyer's intent or purpose to deceive is generally irrelevant to Rule 8.4( c). *See In*  
32 *re Lawrence*, 884 So. 2d 561 (La. 2004) (lawyer who submitted false timesheets to firm  
33 violated rule regardless of intent or motive); *State ex rel. Special Counsel v. Shapiro*, 665

1 N.W. 2d 615 (Neb. 2003) (misrepresentation does not require proof of intent to deceive or  
 2 defraud).  
 3

4  
 5 *In re Dann*, 960 P. 2d 416 (Wash. 1998) (in determining whether lawyer violated Rule  
 6 8.4( c), "the question is whether the attorney lied"; motive irrelevant);  
 7

8  
 9 *cf. Att'y Grievance Comm'n v. Dore*, 73 A. 3d 161 (Md. 2013) (" dishonesty and  
 10 misrepresentation under Rule 8.4( c) have no requirement of intent to deceive"; intent to  
 11 deceive relevant only when fraud or deceit alleged).  
 12  
 13

14  
 15 **Behavior toward Courts, Opposing Parties, Their Counsel, or Witnesses Rule:**  
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17  
 18 Lying to or misleading a court can violate Rule 8.4( d). *See In re Alcorn*, 41 P. 3d 600  
 19 (Ariz. 2002).  
 20

21  
 22 Rule 8.4 (d) encompasses abusive or uncivil behavior toward opposing counsel, as  
 23 well as parties and witnesses. *See In re Fletcher*, 424 F. 3d 783 (8th Cir. 2005) (pattern of  
 24 unprofessional conduct "in an attempt to harass, humiliate and intimidate deponents and  
 25 their counsel" by, for example, "selectively quoting deposition testimony in a way that  
 26 grossly mischaracterized deponents' statements").  
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1 **IV. RELIEF REQUESTED**

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4 Plaintiffs respectfully request the following:

- 5  
6 1. **Immediate disqualification** of attorneys Sarah Turner and Michael Tracy from  
7 representation of Defendants Nathan Cliber and Blair Russ;

8  
9 An evidentiary or oral argument hearing to fully address the prejudice to Plaintiffs  
10 and jury confusion issues arising from this conflict; and

- 11  
12  
13 2. Any additional relief the Court deems just and appropriate.  
14

15  
16 **V. CONCLUSION**

17  
18 Due to the substantial ethical conflict under RPC 1.7, RPC 3.3, RPC 3.7, RPC 8.3,  
19 and RPC 8.4 - as well as the inherent jury prejudice from ambiguity in these attorneys'  
20 dual roles, this Court should immediately disqualify Sarah Turner and Michael Tracy  
21  
22 from acting as counsel for Defendants Nathan Cliber and Blair Russ.  
23

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25  
26 Respectfully submitted on this day of March 17, 2025, by Plaintiffs  
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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Case Record Public Access Policy of the Unified Judicial System that require filing confidential information and documents differently than non-confidential information and documents

I certify that this MOTION contains 3110 words in compliance with the Local Civil Rules.

DATED: March 17, 2025.

A handwritten signature in purple ink, appearing to read 'Urve Maggitti', is written over a horizontal line.

Address: 244 Blackburn Drive, Berwyn, PA 19312  
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